

ON JUNE 19, 2015, R277-602 WAS APPROVED BY THE UTAH STATE BOARD OF EDUCATION (USBE) ON SECOND READING. THE RULE IS SCHEDULED FOR THIRD AND FINAL READING BY THE USBE AT ITS AUGUST 7, 2015 MEETING.

R277. Education, Administration.

R277- 602. Special Needs Scholarships - Funding and Procedures.

R277-602-1. Authority and Purpose.

- (1) This rule is authorized by:
 - (a) Utah Constitution Article X, Section 3, which vests general control and supervision of the public school system under the Board;
 - (b) Subsection 53A-1a-706(5)(b), which provides for Board rules to establish timelines for payments to private schools;
 - (c) Title 53A, Chapter 15, Part 15, Background Checks, which provides for criminal background checks and ongoing monitoring for employees and volunteers;
 - (d) Section 53A-1a-707, which provides for Board rules about eligibility of students for scholarships and the application process for students to participate in the scholarship program; and
 - (e) Subsection 53A-1-401(3), which allows the Board to adopt rules in accordance with its responsibilities.
- (2) The purpose of this rule is to:
 - (a) outline responsibilities of a parent, an LEA, and an eligible private school that accepts a scholarship from a special needs student and the Board in providing choice for a parent of a special needs student who chooses to have a student served in a private school; and
 - (b) provide accountability for the citizenry in the administration and distribution of the scholarship funds.

R277-602-2. Definitions.

- (1) "Appeal" means an opportunity to discuss or contest a final administrative decision consistent with and expressly limited to the procedures of this rule.
- (2) "Appeals Committee" means a committee comprised of:
 - (a) the special needs scholarship coordinator;
 - (b) the USOE Special Education Director;
 - (c) one individual appointed by the Superintendent or designee; and
 - (d) two Board-designated special education advocates.
- (3) "Assessment" means a formal testing procedure carried out under prescribed and uniform conditions that measures a student's academic progress, consistent with Subsection 53A-1a-705(1)(f).
- (4) "Assessment team" means the individuals designated under Subsection 53A-1a-703(1).
- (5) "Days" means school days unless specifically designated otherwise in this rule.
- (6) "Eligible student" means a student who meets the qualifications described in Section 53A-1a-704.
- (7) "Enrollment" means that:

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(a) the student has completed the school enrollment process;
(b) the school maintains required student enrollment information and documentation of age eligibility;

(c) the student is scheduled to receive services at the school;

(d) the student attends regularly; and

(e) the school has accepted the student consistent with Rule R277-419 and the student's IEP.

(8) "Final administrative action" means the concluding action under Title 53A, Chapter 1a, Part 7, Carson Smith Scholarships for Students with Special Needs Act and this rule.

(9) "Private school that has previously served a student with a disability" means a school that:

(a) has enrolled a student within the last three years under the special needs scholarship program;

(b) has enrolled a student within the last three years who has received special education services under an Individual Services Plan (ISP) from an LEA where the school is geographically located; or

(c) can provide other evidence to the Board that is determinative of having enrolled a student with a disability within the last three years.

(10) "Warrant" means payment by check to a private school.

R277-602-3. Parent Responsibilities and Payment Provisions.

(1) If the student is enrolled in a public school or was enrolled in a public school in the year previous to the year in which the scholarship is sought, the parent shall submit an application, available from the Superintendent or online, to the LEA within which the parent resides.

(a) Consistent with the timeline provided in Subsection 53A-1a-704(4), the parent shall complete all required information on the application and submit, with the application, documentation that:

(i) the parent is a resident of the state;

(ii) the student is at least three years of age before September 2 of the year of enrollment;

(iii) the student is not more than 21 years of age and has not graduated from high school;

(iv) the student has satisfied Subsection (1) or (2); and

(v) the student has official acceptance at an eligible private school, as established by Section 53A-1a-705.

(b) The parent shall sign the acknowledgments and refusal to consent to services on the application form consistent with Section 53A-1a-704.

(c) Any intentional falsification, misinformation, or

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incomplete information provided on the application may result in the cancellation of the scholarship to the student and non-payment to the private school.

(2) If the student was not enrolled in a public school in the year previous to the year in which the scholarship is sought, the parent shall submit an application to the school district responsible for child find under the Individuals with Disabilities Education Act, 20 U.S.C Sec. 1414.

(a) The parent shall complete all required information on the application and submit, with the application, documentation that:

(i) the parent is a resident of the state;

(ii) the student is at least three years of age before September 2 of the year of enrollment;

(iii) the student is not more than 21 years of age and has not graduated from high school;

(iv) the student has satisfied Subsection (1) or (2); and

(v) the student has official acceptance at an eligible private school, as established by Section 53A-1a-705.

(b) The parent shall sign the acknowledgments and refusal to consent to services on the application form consistent with Section 53A-1a-704.

(c) The parent shall participate in an assessment team meeting to determine:

(i) if a student would qualify for special education services; and

(ii) the level of services for which the student would be eligible if enrolled in a public school.

(3)(a) The Board shall make a scholarship payment in accordance with Section 53A-1a-706.

(b) The parent shall, consistent with Subsection 53A-1a-706(8), endorse the warrant received by the private school from the Superintendent no more than 15 calendar days after the private school's receipt of the warrant.

(4)(a) The parent shall notify the Board in writing within five days if the student does not continue in enrollment in an eligible private school for any reason, including:

(i) parent or student choice;

(ii) suspension or expulsion of the student; or

(iii) the student misses more than 10 consecutive days.

(b) If the student does not continue in enrollment, the Board may modify the payment to the private school.

(5) The parent shall cooperate and respond within 10 days to an enrollment cross-checking request from the Board.

(6) The parent shall notify the Board in writing by March 1 annually to indicate the student's continued enrollment.

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R277-602-4. LEA Responsibilities.

(1) An LEA that receives a student's scholarship application consistent with Subsection 53A-1a-704(4) shall forward an application to the Board no more than 10 days following receipt of the application.

(2) The LEA that receives a student's scholarship application shall:

(a) verify enrollment of the student seeking a scholarship in a previous school year within a reasonable time following contact by the Board;

(b) verify the existence of the student's IEP and level of service to the Superintendent within a reasonable time;

(c) provide personnel to participate on an assessment team to determine:

(i) (A) if a student who was previously enrolled in a private school that has previously served a student with a disability would qualify for special education services if enrolled in a public school; and

(B) the appropriate level of special education services that would be provided were the child enrolled in a public school for purposes of determining the scholarship amount consistent with Subsection 53A-1a-706(2); or

(ii) if a student previously receiving a special needs scholarship is entitled to receive the scholarship during the subsequent eligibility period.

(3) A special needs scholarship student may not enroll in an LEA for dual enrollment or an extracurricular activity, consistent with the parent's assumption of full responsibility for a student's services under Subsection 53A-1a-704(5).

(4) An LEA shall cooperate with the Board in cross-checking special needs scholarship student enrollment information, as requested by the Board.

(5) (a) An LEA shall provide written notice to a parent of a student who has an IEP of the availability of a scholarship to attend a private school in accordance with Subsection 53A-1a-704(10).

(b) The written notice shall consist of the following statement: A local education agency is required by Utah law, Subsection 53A-1a-704(10), to inform parents of students with IEPs enrolled in public schools, of the availability of a scholarship to attend a private school through the Carson Smith Scholarship Program.

R277-602-5. State Board of Education Responsibilities.

(1) No later than April 1, the Board shall provide an application containing acknowledgments required under Subsection

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53A-1a-704(5), for a parent seeking a special needs scholarship:

- (a) online;
- (b) at the Board office; and
- (c) at LEA offices.

(2) The Board shall provide a determination that a private school meets the eligibility requirements of Section 53A-1a-705 as soon as possible but no more than 30 calendar days after the private school submits an application and completes documentation of eligibility.

(3) The Board may:

(a) provide reasonable timelines within the application for satisfaction of private school requirements;

(b) issue letters of warning;

(c) require the school to take corrective action within a time frame set by the Board;

(d) suspend the school from the program consistent with Section 53A-1a-708;

(e) impose a penalty as the Board determines appropriate under the circumstances;

(f) establish an appropriate penalty for a private school that fails to:

(i) provide an affidavit under Section 53A-1a-708;

(ii) administer an assessments or report an assessment to a parent or assessment team under Subsection 53a-1a-705(1)(f);

(iii) employ teachers with credentials required under Subsection 53A-1a-705(g);

(iv) provide to a parent relevant credentials of teachers under Subsection 53A-1a-705(i); or

(v) require a completed criminal background and ongoing monitoring under Title 53A, Chapter 15, Part 15, Background Checks and take appropriate action consistent with information received; and

(g) initiate a complaint and hold an administrative hearing, as appropriate, and consistent with this rule.

(4) The Board shall make a list of eligible private schools updated annually and available no later than June 1 of each year.

(5) The Board shall provide information about an approved scholarship and availability and level of funding to a scholarship applicant parent no later than March 1 of each year.

(6) The Board shall mail a scholarship payment directly to a private school as soon as reasonably possible consistent with Subsection 53A-1a-706(8).

(7) If an annual legislative appropriation is inadequate to cover all scholarship applicants and documented levels of service, the Board shall establish by rule a lottery system for determining the scholarship recipients, with preference provided for under

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Subsection 53A-1a-706(1)(e).

(8) The Board shall verify and cross-check, using USOE technology services, special needs scholarship student enrollment information consistent with Subsection 53A-1a-706(7).

R277-602-6. Responsibilities of Private Schools that Receive Special Needs Scholarships.

(1) A private school that intends to enroll a scholarship student shall submit an application by the deadline established in Section 53A-1a-705.

(2) A private school shall submit an application and appropriate documentation for eligibility to receive a special needs scholarship student to the Superintendent on forms designated by the Superintendent.

(3) A private school shall satisfy criminal background check and ongoing monitoring requirements for an employee and a volunteer consistent with Title 53A, Chapter 15, Part 15, Background Checks.

(4) A private school that seeks to enroll a special needs scholarship student shall, in concert with the parent seeking a special needs scholarship for a student, initiate the assessment team meetings required under Section 53A-1a-704.

(a) A private school shall schedule a meeting at a time and location mutually acceptable to the private school, the applicant parent, and participating public school personnel.

(b) Designated private school and public school personnel shall maintain documentation of the meeting and the decision made for a student.

(c)(i) Except as provided by Subsection (4)(c)(ii), a private school and public school shall confidentially maintain documentation regarding a required assessment team meeting, including documentation of:

(A) a meeting for a student denied a scholarship or service; and

(B) a student admitted into a private school and the student's level of service.

(ii) Upon request by the Superintendent, a private school and public school shall provide the documentation described in Subsection (4)(c)(i) to the Superintendent for purposes of determining student scholarship eligibility or for verification of compliance.

(5) A private school that receives a scholarship payment under this rule shall provide complete student records in a timely manner to another private school or a public school that requests student records if a parent transfers a student under Subsection 53A-1a-704(7).

(6) A private school shall notify the Board within five days

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if the student does not continue in enrollment in an eligible private school for any reason, including:

- (a) parent or student choice;
- (b) suspension or expulsion of the student; or
- (c) the student misses more than ten consecutive days of school.

(7) A private school shall satisfy health and safety laws and codes required by Subsection 53A-1a-705(1)(d), including:

(a) the adoption of emergency preparedness response plans that include training for school personnel and parent notification for fire drills, natural disasters, and school safety emergencies; and

(b) compliance with Rule R392-200, Design, Construction, Operation, Sanitation, and Safety of Schools.

(8)(a) An approved eligible private school that changes ownership shall submit a new application for eligibility to receive a Carson Smith scholarship payment from the Board:

(i) that demonstrates that the school continues to meet the eligibility requirements of this rule; and

(ii) within 60 calendar days of the date that an agreement is signed between previous owner and new owner.

(b) If the Superintendent does not receive the application within the time described in Subsection (8)(a)(ii):

(i) the new owner of the school is presumed ineligible to receive continued Carson Smith scholarship payments from the Superintendent;

(ii) at the discretion of the Board, the Superintendent may reclaim any payments made to a school within the previous 60 calendar days;

(iii) the private school is not an eligible school; and

(iv) the private school shall submit a new application for Carson Smith eligibility consistent with the requirements and timelines of this rule.

R277-602-7. Special Needs Scholarship Appeals.

(1)(a) A parent of an eligible student or a parent of a prospective eligible student may appeal only the following actions under this rule:

(i) an alleged violation by the Superintendent of Sections 53A-1a-701 through 710 or this rule; or

(ii) an alleged violation by the Superintendent of a required timeline.

(b) An appellant has no right to additional elements of due process beyond the specific provisions of this rule.

(2) The Appeals Committee may not grant an appeal contrary to Sections 53A-1a-701 through 53A-1a-710.

(3) A parent shall submit an appeal:

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(a) in writing to the USOE Special Needs Scholarship Coordinator at: Utah State Office of Education, 250 East 500 South, P.O. Box 144200, Salt Lake City, UT 84114-4200; and

(b) within 15 calendar days of written notification of the final administrative decision.

(4)(a) The appeal opportunity does not include an investigation required under or similar to an IDEA state complaint investigation.

(b) Nothing in the appeals process established under this rule shall be construed to limit, replace, or adversely affect parental appeal rights available under IDEA.

(5) The Appeals Committee shall:

(a) consider an appeal within 15 calendar days of receipt of the written appeal;

(b) transmit the decision to a parent no more than ten calendar days following consideration by the Appeals Committee; and

(c) finalize an appeal as expeditiously as possible in the joint interest of schools and students involved.

(6) The Appeals Committee's decision is the final administrative action.

KEY: special needs students, scholarships

Date of Enactment or Last Substantive Amendment: 2015

Notice of Continuation: 2015

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1a-706(5)(b); Title 53A, Chapter 15, Part 15; 53A-1a-707; 53A-1-401(3)